

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-7 AND SECOND NOTICE OF COMMENT PERIOD #99-7(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING CHEMICAL ACCIDENTAL RELEASE PREVENTION REQUIREMENTS

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language to: (1) incorporate by reference the June 20, 1996, final federal rule for chemical accidental release prevention requirements at 40 CFR 68 Subparts A through H; and (2) update the previous incorporation by reference of the list of regulated substances (62 FR 45130, August 25, 1997, and 62 FR 640, January 6, 1998). The purpose of this notice is to seek public comment on the draft rule, including suggestions for specific language to be included in the rule. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

CITATIONS AFFECTED: 326 IAC 20-2-1.

AUTHORITY: IC 13-14-8; IC 13-14-9-7; IC 13-17-3-4; IC 13-17-3-11.

STATUTORY REQUIREMENTS

IC 13-14-9-7 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first public comment period would provide no substantial benefit, IDEM may forego this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by IC 13-14-9-7, the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-7.

The statute provides for this shortened rulemaking process if the commissioner determines that "the rulemaking policy alternatives available to the department are so limited that the public notice and comment period under [IC 13-14-9-3] . . . would provide no substantial benefit to:

- (1) the environment; or
- (2) persons to be regulated or otherwise affected by the proposed rule."

BACKGROUND

The Clean Air Act Amendments of 1990, Section 112(r), address accidental releases requiring EPA to establish a list of regulated substances and thresholds, and to promulgate chemical accidental release prevention regulations, including requirements for risk management plans. The Clean Air Act makes it clear that facilities that handle hazardous substances have the primary responsibility for ensuring their safe use. The term "accidental release" means an unanticipated

emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

On January 31, 1994, U.S. EPA promulgated a list of regulated substances and the method to determine whether more than a threshold quantity of a regulated substance is present at a stationary source with the intent that at a later date they would promulgate chemical accidental release prevention requirements for these sources in accordance with Section 112(r) of the Clean Air Act Amendments of 1990. 59 FR 4478. On November 1, 1995, IDEM incorporated the list of regulated substances by reference into 326 IAC 20-2 to fulfill Title V program approval requirements, with the intention of adopting chemical accidental release prevention requirements once they became available. On June 20, 1996, U.S. EPA promulgated regulations at 40 CFR 68 to prevent accidental release of regulated substances and to reduce the severity of those releases that do occur. (61 FR 31668)

U.S. EPA has amended the list of regulated substances twice. On August 25, 1997, the list was amended to delete the listing and related threshold for hydrochloric acid solutions with less than thirty-seven percent (37%) concentrations of hydrogen chloride. (62 FR 45130) On January 6, 1998, the list was again amended to delete the category of Division 1.1 explosives; to exempt regulated flammable substances in gasoline used as a fuel and in naturally occurring hydrocarbon mixtures prior to initial processing; and to modify the definition of stationary source to clarify the exemption of transportation and storage incident to transportation. (63 FR 640)

The requirements of this rule apply to sources on a process level basis. A source may have different levels of requirements for each affected process at the facility. Processes are divided into three (3) program levels based on:

- (1) the potential for offsite consequences associated with a worst-case accidental release; (2) accident history; or
- (3) compliance with the prevention requirements under the Occupational Health and Safety Administration's (OSHA) process safety management standard.

Processes that have no potential impact on the public in the case of an accidental release have minimal requirements. For other processes, sources implement a risk management program that includes more detailed requirements for hazard assessment, prevention, and emergency response. Processes in industrial categories with a history of accidental releases, and processes already complying with OSHA's process safety management standard are subject to a prevention program that is identical to parallel elements of the OSHA standard. All other processes are subject to streamlined prevention requirements. All sources must prepare a risk management plan based on the risk management programs established at the source. The plans are submitted to a central point specified by U.S. EPA and will be available to state and local governments and the public. The plans are due to U.S. EPA by June 21, 1999.

This rulemaking serves a twofold purpose: (1) to incorporate by reference the federal regulations to prevent accidental release of regulated substances and the plan to reduce the severity of those releases that do occur (40 CFR 68 Subparts A through H); and (2) to update the previous incorporation by reference of the list of regulated substances (62 FR 45130, August 25, 1997, and 62 FR 640, January 6, 1998). At this time, IDEM is not the implementing agency for the chemical accidental release program. By adopting the federal rule by reference, IDEM will have the discretion to implement elements of the federal program that are appropriate in coordination with U.S. EPA. These regulations will encourage sources to reduce the probability of accidental releases of substances that have the potential to cause immediate harm to public

health and the environment and will stimulate dialogue between industry and the public to improve accident prevention and emergency response practice.

FINDINGS

The commissioner of IDEM has prepared written findings regarding rulemaking on chemical accidental release prevention requirements. These findings are prepared under IC 13-14-9-7 and are as follows:

(1) This rulemaking is an adoption of federal rules that have already gone through a rigorous public comment period at the federal level. There is opportunity to comment on this state rulemaking during one comment period, as well as at the preliminary and final adoption hearings at the state level.

(2) I have determined that under the specific circumstances pertaining to this rule, the rulemaking policy alternatives are so limited that the public notice and comment period provided in the notice of first public comment period would provide no substantial benefit to the environment or to persons to be regulated or otherwise affected by the rule.

(3) The draft rule is hereby incorporated into these findings.

John M. Hamilton
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the rule. Mailed comments should be addressed to:

#99-7(APCB) Chemical accidental release prevention requirements
Janet McCabe
Assistant Commissioner
Office of Air Management
Indiana Department of Environmental Management
P.O. Box 6015
Indianapolis, Indiana 46206-6015

Hand delivered comments will be accepted by the receptionist on duty at the tenth floor reception desk, Office of Air Management, 100 North Senate Avenue, Indianapolis, Indiana, Monday through Friday, between 8:15 a.m. and 4:45 p.m.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0430.

COMMENT PERIOD DEADLINE

Comments must be postmarked, hand delivered, or faxed by March 2, 1999.

Technical information regarding this action may be obtained from Susan Bem, Program Planning and Policy Section of the Office of Air Management at (317) 233-5697 or (800) 451-6027, press 0, and ask for 3-5697 (in Indiana). Additional information regarding this action may

be obtained from Kiran Verma, Rules Development Section of the Office of Air Management at (317) 233-5678 or (800) 451-6027, press 0, and ask for 3-5678 (in Indiana).

DRAFT RULE

326 IAC 20-2-1

SECTION 1. 326 IAC 20-2-1 IS AMENDED TO READ AS FOLLOWS

326 IAC 20-2-1 Applicability; incorporation by reference of federal standards

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 1. (a) ~~The provisions of This rule apply~~ **applies** to stationary sources which manufacture, process, use otherwise handle regulated substances that exceed the thresholds established in 40 CFR 68.130, 59 FR 4478; **more than a threshold quantity of a regulated substance in a process as determined under subsection (b).**

(b) The air pollution control board incorporates by reference: ~~59 FR 4478*~~,

(1) 40 CFR 68 Subparts A through H*;

(2) 40 CFR 68, 62 FR 45130 (August 25, 1997)*; and

(3) 40 CFR 68, 63 FR 640 (January 6, 1998)*;

~~which establishes general requirements and lists~~ **that establish a list of regulated substances for accidental release prevention programs, and thresholds, and the requirements for owners or operators of stationary sources concerning the prevention of accidental releases,** with the exception of Section ~~68.120(a);~~ **68.120** concerning administrator discretion to add or delete listed regulated substances.

*Copies of the Code of Federal Regulations (CFR) and Federal Register (FR) referenced in this ~~article set~~ obtained from the Government Printing Office, Washington, D.C. ~~20402~~ **20402** or **are available for copyin** the Indiana Department of Environmental Management, Office of Air Management, **Indiana Government Center-North**, 100 North Senate Avenue, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 20-2-1; filed Nov 1, 1995, 8:30 a.m.: 19 IR 341*)

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2 and IC 13-14-9, notice is hereby given that on May 5, 1999 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room A, Indianapolis, Indiana, the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 20-2-1 concerning chemical accidental release prevention requirements .

The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

Technical information regarding this action may be obtained from Susan Bem, Program Planning and Policy Section of the Office of Air Management at (317) 233-5697 or (800) 451-

6027, press 0, and ask for 3-5697 (in Indiana). Additional information regarding this action may be obtained from Kiran Verma, Rules Development Section of the Office of Air Management at (317) 233-5678 or (800) 451-6027, press 0, and ask for 3-5678 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change of Notice section of the Indiana Register.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

Attn: Sandy Meanor, ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015

or call (317) 233-1785 (V) or (317) 233-6565 (TDD). Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Management, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.